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WHEN RECORDED RETURN TO:
 LAW OFFICE OF JEFFREY G. WAGNER
 88 Kearny Street, Suite 1500
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SEASCAPE
 DECLARATION
 OF
 RESTRICTIONS

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DECLARATION
OF
RESTRICTIONS**

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SEASCAPE

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is executed by FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation ("First American") with reference to the following facts:

- A. First American, under a holding agreement (No. 600520) with Citation Northern, a California corporation, as Declarant, owns certain real property in Vallejo, California, more particularly described on the subdivision map entitled "Amended Final Map of Shadow Ridge Unit No. 4" filed in the records of Solano County, California, on Aug. 3, 1994, in Book 64 of Maps at page 75. Declarant intends to construct a residential development consisting of 87 residential lots and three common area lots thereon. Parcels A, B, C and D as shown on the Map are not subject to this Declaration.
- B. Declarant desires to impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to describe certain easements that will be appurtenant to the lots and/or in favor of the homeowners association, and to establish a planned development within the meaning of Civil Code section 1351(k).

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

- 1.1 Articles. The Articles of Incorporation of the Association and any amendments thereto.
- 1.2 Association. Seascape of Vallejo Homeowners Association, a California nonprofit mutual benefit corporation.
- 1.3 Board. The Board of Directors of the Association.
- 1.4 Bylaws. The Bylaws of the Association and any amendments thereto.

1.5 Common Area. The parcel containing the private streets designated Summersville Court, Suncilffe Place and Wellington Place, and Parcel E the parcel containing the private streets designated Barington Drive and Bayhurst Drive, all as shown on the Map, and all Improvements thereon. The common area shall be owned by the Association for the mutual benefit of all of the Members.

1.6 Declarant. Citaton Northern, a California corporation, and any successor or assign that assumes in writing the rights and duties of the "Declarant" hereunder.

1.7 Declaration. This Declaration of Restrictions and any amendments or corrections thereto.

1.8 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Residential Lots, the Common Area, and all Improvements thereon.

1.9 Governing Documents. This Declaration, the Articles of Incorporation, and the Bylaws of the Association.

1.10 Improvements. Any fixtures affixed to any Lot or Common Area in the Development within the meaning of Civil Code section 660.

1.11 Lot or Residential Lot. Lots 1 through 87 as shown on the Map and all Improvements thereon.

"Amended

1.12 Map. The subdivision map entitled "Final Map of Shadow Ridge Unit No. 4" filed in the records of Solano County, California, on August 3, 1994, in Book 64 of Maps, at Page 75.

1.13 Member. A member of the Association.

1.14 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.15 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.16 Owner. The record title owner or owners of a Lot in the Development.

1.17 Person. Any natural person, partnership, corporation or other legal entity.

1.18 Property. The land shown on the Map, together with all Improvements thereon, except A, B, C and D and any Improvements thereon.

1.19 Rules. Rules or regulations adopted by the Association from time to time pursuant to the authority of Section 5.6(f).

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k) and shall consist of 87 Residential Lots and the Common Area.

2.2 Property Rights. Each Owner shall own a fee interest in a Residential Lot and shall be a Member of the Association. The Association shall own the fee interest in the Common Area.

2.3 Shared Fences. As part of the original construction of the Development, Declarant constructed fences on or about the common boundary line between two adjoining Lots. The adjoining Owners shall jointly share the maintenance and repair of the shared fence. The cost of the maintenance and repair shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary in order to maintain, repair or replace the shared fence. Any dispute between the adjoining Lot Owners regarding the need for maintenance or repair of any shared fence, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be submitted to the American Arbitration Association, or any successor thereto, for resolution in accordance with its commercial rules. In such proceedings, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto. The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

2.4 Easements. Each Lot and the Common Area is subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Lot or Common Area, or any other appropriate public record.

2.5 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot and the Common Area, as the case may be, are subject to each of the following:

(i) The right of Declarant or its agents to enter on any portion of the Development to construct the improvements that Declarant intends to construct on the Property, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) The right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) The right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any improvement or landscaping located on the Lot;

(iv) The rights reserved in Sections 2.6, 2.8, and 12.12; and

(v) The right of the Association to adopt and enforce Rules as described in Section 5.6;

2.6 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Lots in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, exclusive use easements or rights, rights-of-way and/or dedications in, on, over or under the Common Area, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or

facilities; (ii) accommodate any encroachment that in the sole discretion of the Board does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board is in the best interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Lots in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section 2.6 shall require the consent of a majority of the total voting power of the Association other than Declarant.

2.7 Delegation of Use Rights. An Owner's family members and guests and any such other Persons as may be permitted by the Rules may use and enjoy any Common Area Improvements. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner has rented or leased his or her Lot, the Owner, members of the Owner's family and the Owner's guest shall not be entitled to use any Common Area Improvements. Such rights may be enjoyed by the tenant or contract purchaser and, as the case may be, their family members and guests.

Any Owner who rents or leases his or her Lot must comply with the requirements of Section 3.2.

2.8 Conveyance of Common Area. The Common Area shall be conveyed to the Association on or before the date the Declarant first conveys title to a Lot. The Common Area as the servient tenement is subject to the rights reserved in Section 2.5 and to an easement in favor of each Lot as the dominant tenement for ingress and egress over the private streets and walkways situated on the servient tenement, for support from any Common Area land adjacent to any Improvements on any Lot, and for access to and use of (including the right to install, maintain, repair or replace) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over the servient tenement in order to provide utility or related service to the dominant tenement, including water, electricity, telephone, gas, cable tv and sanitary sewer or storm drainage lines and equipment, and for access to and use of the Common Area by Declarant and its subcontractors and agents to construct, maintain and sell the Lots. The rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Association may adopt Rules regulating the use of the Common Area provided such Rules do not interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration.

2.9 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

ARTICLE 3 - Restrictions

3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose. Notwithstanding the foregoing, Owners or occupants of the Lots may use a room or rooms in the residence as an office provided that the primary use of the Lot is as a residence, no advertising or a sign is used in any manner in connection with the office use, and no customers, clients, or patients enter the Lot on any regular basis. The Board shall have the authority to adopt additional Rules and regulations regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction provided that such use shall terminate no later than three years after the date of recordation of this Declaration.

3.2 Leasing. The Owner may rent or lease his or her Lot provided each of the following conditions is satisfied:

(i) The lease or rental agreement must be in writing and must be for an initial term of not less than 90 days;

(ii) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the lease or rental agreement; and

(iii) Before commencement of the lease or rental agreement, the Owner shall provide the Association with the names of the tenants and each family member who will reside on the Lot and the address and telephone number of the Owner.

Any Owner that leases or rents his or her Lot shall keep the Association informed at all times of the Owner's address and telephone number. Any lease or rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

3.3 Nuisance. No activity shall be conducted on any Lot or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Lot.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked on any Residential Lots and Common Area. For purposes herein, "truck" does not include a pickup truck not exceeding three-quarter tons. Automobiles, motorcycles and trucks not exceeding three-quarter tons are expressly "permitted" on the Residential Lots and Common Area. Garages shall be used principally for the storage of these "permitted" vehicles. "Permitted" vehicles may also be parked in the driveway apron for periods of less than 24 hours. No garage space may be converted into any use that would prevent its use as storage for two automobiles. The Board may adopt Rules regulating parking in the Common Area so that the spaces are available exclusively for guest parking.

3.5 Towing Authority. The Association may install a sign at each vehicular entrance to the Development containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Development will be removed at the owner's expense. The sign shall contain

the telephone number of the local traffic law enforcement agency and shall not be less than 17" by 22" in size and the lettering not less than one inch in height.

The Association may cause the removal of any vehicle wrongfully parked within the Development, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the president of the Association or his or her designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery, or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within 120 hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California, and shall file a copy of the notice with the proprietor of the public garage in which the vehicle was stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, grounds for removal, and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within 15 feet of a fire hydrant, in a parking space designated for handicapped without proper authority, or parked in a manner which interferes with any entrance to, or exit from, the Development or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal unless such damage resulted from the intentional act of any agent of the Association. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

Unless the Board provides otherwise, any director or officer, any manager or manager's agent or any other authorized to do so by any director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Development.

The provisions of this Section 3.5 are intended to comply with Vehicle Code section 22658.2. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect.

3.6 Animals. Normal and customary household pets may be maintained on a Lot under the following conditions:

- (i) There shall be no more than two dogs; or two cats; or one dog or one cat;
- (ii) No animal shall be maintained for any commercial purposes;
- (iii) The use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board; and
- (iv) The Owner shall be responsible for any damage to any Common Area caused by any animal maintained on the Owner's Lot.

The Board may, after notice and a hearing, require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Lot. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Rules regulating pets after receipt of a demand from the Board to comply with the Rules.

3.7 Television or Radio Equipment. Without the prior written consent of the Board, no television or radio poles, antenna, satellite dishes, cables or other external fixtures or personal property shall be installed or maintained on any Lot that is visible from the Common Area or any other Lot except for such equipment installed by Declarant as part of the original construction of the Development. The Board may adopt Rules regulating the installation and maintenance of such equipment, including a Rule that prohibits such installation or maintenance if the equipment is visible from any other Residential Lot, the Common Area, or any public right-of-way.

Nothing herein shall be construed to restrict in any manner the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, radio or other similar services to the Development.

3.8 Signs. No sign of any kind shall be displayed from any Lot that is visible from the Common Area or any other Lot except the following:

(i) Any sign not exceeding 2½ feet by 2½ feet advertising the Lot for sale or for rent, provided that no more than one such sign is used and the sign is situated on the Lot that is to be sold or rented;

(ii) Any sign of a political nature, provided the sign is placed inside a window; or

(iii) Any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board.

3.9 Trash Removal. Each Lot Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas designated for such except on trash collection day if curbside service is provided.

3.10 Clothesline. No exterior clothesline shall be erected or maintained on any Lot; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Lot.

3.11 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white, off-white or beige unless approved otherwise in writing by the Architectural Review Committee.

3.12 Subdivision. No Lot shall be subdivided into two or more lots without the prior written consent of the Association.

3.13 Automobile Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.14 Commonly-Metered Utilities. The Board may adopt Rules regulating the use of any commonly-metered utilities that are paid by the Association.

3.15 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of Article 7.

3.16 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal

agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.17 Reimbursement and Indemnification. If any Owner, occupant, tenant or their family members, guests or pets damages the Common Area or any other property owned or maintained by the Association, the Owner, on demand from the Association, immediately shall reimburse the Association for any costs, including attorneys' fees resulting from such damage, except to the extent that the cost is covered by insurance maintained by the Association provided that the deductible amount shall be paid by the Owner. Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible.

3.18 Drilling. No drilling, mining, or quarrying operation shall be conducted on any Lot or the Common Area at anytime.

3.19 Basketball Standards. No basketball standards or backboards shall be installed on any Lot.

3.20 Height Limitation. No structure on any Lot shall be in excess of two stories above ground level.

3.21 Exterior Lighting. All exterior lighting fixtures on structures on any Lot shall be designed and installed to direct lighting downward within the boundaries of the Lot.

ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance Obligations. Each Owner shall maintain his or her Lot and all improvements and landscaping thereon in good condition and repair at all times. Shared fences on a common boundary between adjoining Residential Lots shall be maintained as described in Section 2.3. All other fences on the Residential Lot, including fences located on a common boundary between the Owner's Lot and the Common Area, shall be maintained by the Owner. Each Owner shall have the improvements on the Owner's Lot periodically inspected for wood-destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.

If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in Section 6.5.

4.2 Owner's Landscaping Obligations. Each Owner shall maintain the landscaping on the Owner's Lot in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation on the Owner's Lot. Maintenance shall include regular fertilization, irrigation, pruning and other customary prudent landscaping practices. If the Owner fails to properly maintain the landscaping on the Owner's Lot, the Association may enter the Lot and perform the maintenance under the procedures described in Section 4.1 and shall have the same rights as described in Section 4.1.

Unless installed by the Declarant, each Owner shall install landscaping in the front yard of the Owner's Lot within 180 days after the owner takes title to the Lot. All landscaping shall be installed and maintained pursuant to any landscaping guidelines as may be adopted by the Board.

4.3 Association's Maintenance Responsibilities. The Association shall maintain the Common Area and all Improvements and landscaping thereon in good condition and repair at all times, including but not limited to, driveways, private streets, parking spaces, irrigation systems, lighting fixtures and utilities serving the Common Area, drainage systems, or sanitary sewer systems not maintained by a government agency or public or private utility company.

All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices.

If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in Section 6.5. The Owner immediately shall pay the charge or reimbursement to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in Section 5.4(iv). The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association. Any deductible amount shall be paid by the Owner.

ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within the Declaration, the Articles, the Bylaws and any amendments thereto.

5.3 Membership. Each Owner of a title interest in a Lot automatically shall be a Member of the Association. If there is more than one title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. If any Owner executes an installment contract of sale for the sale of that Owner's Lot, the purchaser shall become the Member if the contract is recorded in the public records and if the Association is notified in writing of the contract; and the Owner no longer shall be a Member. If the purchaser's rights are terminated under the contract without transfer of title to the purchaser, the Board, upon receipt of satisfactory evidence of the termination of the purchaser's rights, shall reinstate the Owner as the Member; and the purchaser shall no longer be a Member.

Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

(i) Class A. Class A Owners are all Owners except the Declarant. Class A Owners shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

(ii) Class B. The Class B Owner shall be the Declarant who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the second anniversary of the first conveyance of a Lot in the Development.

As long as two classes of voting membership exist, any action by the Association that requires approval by the Owners shall require approval by the designated percentage of voting power in each class, except the action described in Section 5.11 of this Declaration. Voting rights shall vest at the time that assessments are levied against the Owner's Lot. Except as otherwise provided in this Declaration, the Articles or the Bylaws, and subject to the provisions of Section 5.11, all matters requiring the approval of the Owners shall be approved if: (i) approved at a duly-called regular or special meeting at which a quorum was present, either in person or by proxy, by Owners holding the majority of the total voting power of all Owners present, either in person or by proxy; (ii) approved by written ballot pursuant to the requirements of Corporations Code section 7513; or (iii) approved by unanimous written consent of all the Owners. If the vote or written consent of each Class of membership is required, any requirement that the vote of the Declarant be excluded is not applicable except as provided in Section 5.11.

5.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, each of the following:

(i) The Board shall establish, fix and levy assessments against the Owners and collect and enforce payment of such assessments in accordance with the provisions of Article 6 of this Declaration.

(ii) The Board may adopt, amend and repeal Rules as it considers appropriate. The Rules shall regulate the use and enjoyment of the Common Area and such other matters as are authorized herein. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency.

Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.

(iii) The Association may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of Section 5.12(v), may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

(iv) In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person or entity whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) suspend use privileges for any recreational facilities within the Development; and (d) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of Section 12.10, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party under such terms and conditions as it considers appropriate.

If the Board adopts a policy imposing monetary penalties, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties. If requested by a Member being disciplined, the Board shall conduct the disciplinary proceeding in executive session. In such session, the Member, and, if applicable, the Member's counsel, and the Association's counsel shall be entitled to attend. In addition, the Board may interview witnesses and other appropriate parties to the disciplinary proceeding in executive session. The provisions of this paragraph are intended to comply with the requirements of Civil Code section 1363(i). If the provisions of section 1363(i) are amended or repealed in any manner, this paragraph automatically shall be amended or repealed in the same manner.

Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

Before the Board imposes any monetary penalties (other than late fees on delinquent assessments) or suspension of membership rights or Common Area use privileges against any Member for failure to comply with the Declaration, these Bylaws or the Rules, the Board must act in good faith and satisfy each of the following requirements:

(a) The Member must be given 15 days' prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. Notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Association's records.

(b) The Member must be given an opportunity to be heard, orally or in writing, by the Board not less than five days before the effective date of the imposition of the discipline.

The Member shall have the opportunity to present witnesses on the Member's behalf and to cross-examine any witnesses who may testify against the Member.

(v) The Association may delegate any of its powers and duties to its employees, committees or agents, including a professional management agent.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area, perform the maintenance as described in Section 4.3, prepare and distribute financial statements, reports and copies of Governing Documents as described in Section 5.10, enforce bonded obligations as described in Section 5.11, levy and collect assessments as described in Article 6, prepare when required the reserve studies described in Section 6.3 and annually review and implement adjustments as required, and procure and maintain the insurance as described in Article 8. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any Property to satisfy the payment of such taxes.

5.9 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area.

5.10 Reporting Requirements. The Association shall prepare and distribute the following:

(i) A pro forma operating budget for each fiscal year shall be distributed not less than 45 days nor more than 60 days before the beginning of the fiscal year consisting of at least the following:

(a) estimated revenue and expenses on an accrual basis;

(b) a summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to Section 6.3, which shall be printed in bold type and shall include the following:

(1) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the 'Major Components');

(2) as of the end of the fiscal year for which the study was prepared:

a. the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components; and

b. the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(3) the percentage that the amount in (2)b is to the amount in (2)a;

(c) a statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor;

(d) a general statement addressing the procedures used for the calculation establishing those reserves to defray the future repair, replacement or additions to the Major Components; and

(e) a statement describing the Members' rights to obtain copies of the minutes of meetings of the Board of Directors, including a description of how and where these minutes may be obtained.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

(ii) A balance sheet rendered as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot (the "Accounting Date"), and an operating statement for the period commencing with the date of the closing of the first sale and ending on the Accounting Date. The operating statement shall include a schedule of assessments, received or receivable, identified by the Lot number and the name of the Owner assessed. Copies of the balance sheet and operating statement shall be distributed to each Owner and any Mortgagee who has requested a copy within 60 days after the Accounting Date.

(iii) An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of change in its financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and any Mortgagee that has requested a copy within 120 days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds \$75,000, a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally-accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent accountant, the reports shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

(iv) A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner and any Mortgagee who has requested a copy within 60 days prior to the beginning of each fiscal year.

(v) Copies of this Declaration, the Articles, Bylaws, Association Rules and a statement regarding delinquent assessments as described in Section 6.12 shall be provided any Owner within ten days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

(vi) A summary of the provisions of Civil Code section 1354 which specifically references the section and includes the following:

Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents.

The summary shall be provided either at the time the pro forma budget described in Section 5.10(f) is distributed or in the manner set forth in Corporations Code section 5016.

The provisions of this Section 5.10 are intended to comply with the requirements of Civil Code sections 1354(f) and 1365. If these Civil Code sections are amended or repealed in any manner, the provisions of this Section 5.10 shall be amended or repealed in the same manner.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Commissioner of Real Estate issued a final subdivision report, the Board will consider a vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a notice of completion has not been filed by the later of (i) 60 days after the completion date specified for that improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider a vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described on the "planned construction statement". Any dispute between the Declarant and the Association regarding the completion of the Common Area shall be resolved in accordance with the procedures of Section 12.17.

5.12 Limitations on Authority of the Board. The Board shall not take any of the following actions without the vote or written consent of Owners holding 51% of the voting rights of each class of Owners if two classes exist; or, if only one class exists, 51% of the voting rights of all Owners and 51% of the voting rights of all Owners other than Declarant:

(i) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(ii) Sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

- (iii) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;
- (iv) Enter into a contract with a third Person to furnish goods or services for the Common Area of the Association for a term longer than one year with the following exceptions:
 - (a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;
 - (b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (c) Prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;
 - (d) Lease agreements for laundry room fixtures and equipment not to exceed five years' duration, provided the Declarant does not have a direct or indirect ownership interest of 10% or more in any lessor under such agreements;
 - (e) Agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more; and
 - (f) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; or
 - (v) Borrow money secured by any Association assets as authorized under Section 5.6(iii).

5.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any Person without providing the Members of the Association with at least 30 days' prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated cost to the Association (including attorneys' fees) in processing the proceeding, the source of funds to process the proceedings (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, "significant legal proceeding" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (i) the levy of a special assessment to fund all or any portion of the proceeding;
- (ii) the expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of 5% of the then current reserves;
- (iii) the amount of the claim is in excess of \$25,000; or
- (iv) the action could have a material adverse effect on the ability to sell and/or refinance the Lots within the Development during the period the proceeding is being prosecuted.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments as described in Section 6.10 or to enforce any Common Area completion bond as described in Section 5.11. Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of title to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, that portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

6.2 Annual Regular Assessment. Not more than 90 days nor less than 60 days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of Section 5.10(f), any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by Section 6.6, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in Section 6.3.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of

the future repair, replacement or additions to the major components that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three years of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a delay is in the best interest of the Development, may delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall not be subject to the assessment increase restrictions set forth in Section 6.6 and Civil Code section 1366(b).

At least once every three years, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

- (i) identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) identification of the probable remaining useful life of the components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in subparagraph (i) during and at the end of its useful life; and
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, 'reserve accounts' means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and 'reserve account requirements' means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

The provisions of this Section 6.3 are intended to comply with the requirements of Civil Code sections 1365.5(c) and (d). If these Civil Code sections are amended or rescinded in any manner, the provisions of this Section 6.3 automatically shall be amended or rescinded in the same manner.

6.4 Special Assessments. Subject to the restrictions described in Section 6.6, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but

not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred by the Association as the result of any act or omission of any Owner or occupant of any Lot or their family members, guests or agents. The levy shall not include any portion that is paid by any Insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner. In addition to reimbursing the Association for costs necessary to repair any Common Area or other Property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant of the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in the Bylaws; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of the Declaration or Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by first class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

Except as authorized in Section 6.3, the Board may not: (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this section, a quorum means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 - 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (i) An extraordinary expense required by an order of court;
- (ii) An extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety on the Property is discovered;
- (iii) An extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the pro forma operating statement as required by Section 5.10(i) for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1365(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the

foregoing purposes, a quorum means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 - 7527 and 7613 or any successor statute thereto.

The provisions of this Section 6.6 are intended to comply with Civil Code section 1366(a) and (b). If this section is amended in any manner, the provisions of this Section 6.6 automatically shall be amended in the same manner, provided that if Civil Code section 1366(b) is repealed and no successor statute is enacted with respect to restrictions on assessments, the provisions of this Section 6.6 shall remain in full force and effect.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate or an earlier date at the discretion of the Declarant.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in monthly installments and shall be due and payable on the first day of each month. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in Section 12.15.

Any annual regular assessment installment, special assessment, or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 Allocation of Assessments. Except for reimbursement assessments, regular and special assessments levied by the Board shall be allocated in equal amounts among the Lots.

6.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

(i) **Personal Obligation.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in Section 6.10(ii).

(ii) **Assessment Lien.** The Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, together with accompanying late charges, interest, costs and reasonable attorneys' fees, by recording a notice of delinquent assessment in the records of the county in which the Development is located. The notice shall describe the amount of the delinquent assessment or assessments, the related charges authorized by this Declaration, a description of the Lot, the name of the Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or an employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate recording of the notice of delinquent assessment to be in the best interests of the Association, the notice shall not be recorded until 15 calendar days after the Owner has received a written notice of default and a demand for payment from the Association. The notice of default and demand for payment shall be deemed received on the date described in

Section 12.15. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

The Board may enforce any assessment lien established hereunder by filing an action for judicial foreclosure or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h that apply to nonjudicial foreclosure of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code section 2934a. The Association may bid on the Lot at the sale and may hold, lease, mortgage and convey the acquired Lot. If the default is cured before the sale or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, to the extent required by Civil Code section 2924(c)(a)(2), notice of rescission. In addition to the remedies described herein, the Board, pending the payment in full of all delinquent assessments and related charges, may suspend the voting rights of the Owner.

6.11 Assessment Exemption. The Declarant and any other Owner of a Lot are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (i) A notice of completion of the common facility has been recorded; or
- (ii) The common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration.

ARTICLE 7 - Architectural Review

7.1 Architectural Review Committee. An Architectural Review Committee (the "Committee") may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one Member to the committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the

power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the Person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in Article 3. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval. None of the following actions shall take place on any Lot without the prior written approval of the Committee:

- (i) Any construction, installation, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, wall, fence, sign, garage, trash enclosure, storage area, berms, utilities (gas, electricity, telephone, water or otherwise) or other Improvements;
- (ii) Any grading, excavation or site preparation; or
- (iii) Any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform with any guidelines established by the Committee. Plans shall adequately describe the proposed Improvements; plot layout; all exterior elevations; materials; colors; signs; landscaping plans (including the type of sodding, seeding, trees, hedges, shrubs and irrigation); number, size and layout of parking; storage areas; trash enclosures; grading and excavation plans; easements and utility locations; proposed fencing; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines; it has established for approving plans and specifications, which variances or exceptions may contain such conditions and time limitations as the Committee deems appropriate.

Under no circumstances shall the Committee authorize any modification, alteration or installation (including, but not limited to, the installation of any bay window or greenhouse window) that expands any residential Improvement beyond the building footprints approved by the City of Vallejo. In addition, the Committee shall not approve the installation of any accessory structures, such as work sheds or gazebos, without the consent of the Board and the City of Vallejo.

If the Committee has established landscaping guidelines, all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee.

Notwithstanding anything herein to the contrary, any Owner may repaint the Improvements on the Owner's Lot in the same colors and remove and replace any siding or roofing materials in the same material and in the same color as originally constructed by Declarant without the approval of the Committee.

The Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. If the Committee fails to approve or disapprove any plans or specifications within 30 days of receipt of either the plans and specifications or any advance payments required by the Committee, whichever shall occur later, the plans and specifications shall be deemed approved unless a written extension is executed by the Person submitting the plans and by the Committee.

Any member of the Committee, or any authorized agent of the Committee, from time to time and anytime during normal business hours, may enter any Lot for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee.

7.3 Non-liability. The Association, the Committee, the Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plan shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.4 Enforcement. If any Owner or occupant violates the provisions of this Article 7, the Declarant or the Association, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this Article 7. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.5 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this Article 7.

7.6 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.7 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this Article 7 in connection with the construction or alteration of any Improvement within the Development, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration.

ARTICLE 8 - Insurance

8.1 Liability Insurance. The Association shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers and the Owners and occupants of the Lots and their respective family members against

any liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain the liability insurance required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

8.2 Common Area Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy covering damage or destruction to any improvements in the Common Area or any Property owned or maintained by the Association. The policy shall provide coverage against damage or destruction by fire and all other hazards that are normally covered by the standard extended coverage endorsement and all other periods customarily covered for similar types of projects, including those covered by the standard "all-risk" endorsement. The policy may exclude from coverage those items that are normally excluded such as land, foundation and excavation. The form, content and term of the policy and endorsements, and the issuing company, shall be selected by the Board.

8.3 Individual Property Insurance Policies. Each Owner shall obtain and maintain, at the Owner's expense, a property insurance policy as may be required by the Owner's Mortgage or, if no Mortgage encumbers the Lot, a property insurance policy containing such terms and conditions as may be required by the Board. All such individually-carried insurance shall contain a waiver of subrogation rights by the insurer as to the other Owners, the Association, Declarant and any first Mortgagee of any Lot.

8.4 Other Insurance. In addition to the policies described in Sections 8.1 and 8.2, the Association shall obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law;
- (ii) Fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds;
- (iii) Flood insurance on Common Area Improvements if the project is located in an area designated by an appropriate governmental agency as a special flood hazard area and the Improvements are of the nature on which hazard insurance is normally maintained;
- (iv) Officers and directors liability insurance; and
- (v) Such other insurance as the Board in its discretion considers necessary or advisable.

8.5 FNMA and FHLMC Requirements. Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage

Corporation ("FHLMC") or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

8.6 Board's Negotiation Authority. The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement in accordance with the original as-built plans and specifications subject to such modifications as may be approved by the Architectural Review Committee or as required by law.

If any Common Area Improvement is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be approved by the Architectural Review Committee or as required by law. Notwithstanding the foregoing but subject to the provisions of Section 9.3, the Association will not be required to reconstruct or restore the damaged or destroyed Common Area Improvement if there are not available insurance proceeds and reserves sufficient to pay for at least 85% of the costs of such repairs or reconstruction and three-fourths of the total voting power of the Association's residing Members and their first lenders vote against such repair or reconstruction.

9.2 Reconstruction Contract. If the Common Area Improvements are to be rebuilt or restored, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Common Area Improvements in accordance with the original plans and specifications subject to such changes as may be approved by the Architectural Review Committee or required by law, and shall award the repair and reconstruction work to the lowest bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to insure the commencement and completion of authorized rebuilding at the earliest possible date.

9.3 Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct Common Area Improvements within the Development without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed \$20,000. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in Article 6.

9.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement, including a residence, shall commence no later than 90 days after the date of such damage or destruction and shall be completed no later than 180 days subject to extensions of like periods because of delays that are beyond the control of the party responsible for making the repairs. The party responsible for making the repairs immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

9.5 Election Not to Rebuild. If any Common Area Improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds will be disbursed to the Association unless Members holding a majority of the total voting power elect to have the proceeds disbursed to the Owners, in which case the proceeds shall be disbursed equally among all the Lots, subject to the rights of the Owners' respective Mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, screening the area from unsightly views, and complying with all the applicable requirements of governmental agencies.

9.6 Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least 51% of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Common Area, or a portion of it, may be sold and conveyed to the condemning authority by the Association. In addition, the Association, acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed or a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, may abandon any easements that the Owners retain over that portion of the Common Area that is sold. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this Article 10 shall have the definitions contained in this Section 10.1. An "institutional" mortgagee is a first mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first mortgage including the Federal Housing Authority and the Veterans Administration. A "first mortgage" or "first mortgagee" is one having a priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Development.

10.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional mortgagee who obtains title to a Lot pursuant to the remedies provided in the first mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first mortgagee) shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments as long as the special assessment is allocated equally among all the Lots.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the project or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest in writing to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Special Voting Requirements. Unless at least 67% of first mortgagees (based on one vote for each Lot secured by the first mortgage) or 67% of the total voting power of the Members of the Association other than Declarant have given their prior written approval, the Association shall not:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. However, the granting of easements for public utilities or for any other public purposes consistent with the intended use of the Common Area by the Association is not a transfer within the meaning of this clause;

(ii) change the method of determining the obligations, assessments, dues or other charges that may be levied against a Lot;

(iii) by act or omission change, waive or abandon the provisions of the Declaration, or the enforcement of them, pertaining to architectural design or the exterior maintenance of Lot structures, the maintenance of the Common Area walkways or common fences and driveways, or the upkeep of lawns and plantings within the Development;

(iv) fail to maintain fire and extended coverage insurance on insurable improvements owned by the Association including any Common Area improvements, on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs); or

(v) use hazard insurance proceeds for losses to any improvements owned by the Association, including Common Area improvements, for other than the repair, replacement or reconstruction of such Property.

10.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any institutional mortgagees pursuant to their Mortgages in case of distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of any Lots or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void.

10.7 Use of Amenities. All Common Area improvements, such as parking, recreation and service areas, shall be available for use by Owners or occupants subject to the exclusive use rights of any Owner, the provisions on transfer of use rights to tenants, and the Association's rights to suspend an Owner's or occupant's right to use Common Area recreational facilities (if any) for breach of the obligations in this Declaration, the Bylaws or the Rules.

10.8 Default Notice. If any Owner is in default under any provision of this Declaration or under any provision of the Articles, Bylaws or the Rules and the default is not cured within 60 days after written notice to that Owner, upon request, the Association shall give to any first mortgagee of such Owners a written notice of such default and of the fact that the 60-day period has expired.

10.9 Tax Payments. First mortgagees of any Lot, jointly or severally, may pay taxes or other charges which are in default and which may be or have become a charge against the Common Area and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance on the lapse of a policy for Common Area Improvements or other insured property of the Association; and, by making such payments, such Mortgagees shall be owed immediate reimbursement from the Association. The provisions shall constitute an agreement by the Association for the express benefit of all first mortgagees; and on request of any first mortgagee, the Association shall execute and deliver such Mortgagee a separate written agreement embodying this provision.

10.10 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

10.11 Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lot is imposed by this Declaration, the Articles, Bylaws or in any deed restriction of any deed from the Declarant to the first purchaser of the Lot.

10.12 Management Contracts. Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either party without cause and without payment of a termination fee on 90 days' written notice or less and shall have a maximum term of one year, provided that the Association can renew any such contract on a year-to-year basis. If any first mortgagee requires that the project be professionally managed, the Association shall not terminate professional management and assume self-management without the consent of 67% of the voting rights of each class of Owners and a 51% of first mortgagees.

10.13 FHAVA Requirements. As long as Declarant retains voting control of the Association as described in Section 5.4 and any loans on any Lots are guaranteed or insured by the Federal Housing Authority (FHA) or the Veterans Administration (VA), none of the following actions shall occur without the prior written approval of FHA or the VA:

- (i) annexation of additional properties;
- (ii) merger or consolidation into any additional property;
- (iii) dissolution of the Association; or
- (iv) amendment of the Articles.

10.14 Conveyance or Mortgage of the Common Area. Notwithstanding anything herein to the contrary, the Association may not convey or encumber the Common Area without the approval of Members holding 67% of the voting power of the Association, excluding Declarant.

ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding the Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership, 50% or more of the shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant and except as otherwise required in Section 10.5, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other Person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, the provisions of Section 12.17 may not be amended or rescinded without the prior written consent of Declarant. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Association for that purpose (or, if no one has been designated, the president of the Association) and the amendment and certification have been recorded in the county in which the Development is located.

ARTICLE 12 - Miscellaneous Provisions

12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provision.

12.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

12.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, sex, marital status, national ancestry, color or religion.

12.5 Access to Books. Any Owner may, at any reasonable time and upon reasonable notice to the Board or manager at the Owner's expense, cause an audit or inspection to be made of the books and financial records of the Association.

12.6 Notification of Sale. No later than five days after the execution of a binding contract to sell any Lot, the selling Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the buyer and the date of sale.

12.7 Number and Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

12.8 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

12.9 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

12.10 Enforcement Rights and Remedies. The covenants, restrictions, right and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the project, each Owner, and each successive Owner thereto, and may be enforced by the Association or any Owner in any legal or equitable action pursuant to the procedures described herein.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in Article 3 and the architectural provisions contained in Article 7. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in the Bylaws. If within 90 days after receipt of the notice, the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any civil action against the Association or any Owner, the Association or the Owner bringing the civil action shall comply with the requirements of Civil Code section 1354 to the extent applicable.

12.11 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be

effective on recordation of a notice of rescission in the records of the county in which the Development is located.

12.12 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the improvements and to sell the improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials on the Property;
- (ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction or sales offices on the Property;
- (iv) maintain sale signs or other appropriate advertisements on the Property;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Property to inspect any Common Area or any model homes.

12.13 Assignment by Declarant. Declarant may assign all of its rights and delegate all of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder. Any successor or assign of the rights and duties of the Declarant may execute an instrument assuming the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant and shall be obligated to perform all the Declarant's duties, provided such successor or assign shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assign succeeded to the rights of the Declarant hereunder.

12.14 Attorneys' Fees. Except as provided in Section 12.17, in the event of any litigation or arbitration regarding the rights or obligations of the Association or any Person subject to this Declaration, the prevailing party in such litigation or arbitration proceeding shall, in the discretion of the judge or the arbitrator, be entitled to recover costs, including reasonable attorneys' fees.

12.15 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

12.16 No Enforcement Waiver. Failure to enforce a restriction in the past shall not, in and of itself, constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Review Committees, changing conditions, or other reasons, and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

12.17 Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer,

subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or the design, construction and installation of any improvements located thereon shall be subject to the following provisions:

(i) **Notice:** Any Person with a claim against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this section) shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "Claim Notice").

(ii) **Right to Inspect and Right to Corrective Action:** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed 60 days, the Declarant and the Claimant shall meet at a mutually-acceptable place within the Development to discuss the claim. At such meeting or at such other mutually-agreeable time, Declarant and Declarant's representatives shall have full access to the Property that is subject to the claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

(iii) **Non-Binding Mediation:** If the parties cannot resolve the claim pursuant to the procedures described in subparagraph (ii) above, the matter shall be submitted to non-binding mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No Person shall serve as a mediator in any dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submittal of the memorandum and shall be concluded within 15 days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Solano County, California, or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, providing the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code section 1152.5(c) or successor statute in order to exclude the use of any testimony or evidence produced at the mediation and any subsequent dispute resolution forum, including, but not limited to, court proceedings or arbitration hearings. Pursuant to California Evidence Code section 1152.5(a), the agreement shall specifically state:

Evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is

admissible in evidence; and disclosure of any such document shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required travelling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

(iv) **Judicial Reference:** If the parties cannot resolve the claim pursuant to the procedures described in subparagraph (iii) above, prior to the commencement of any litigation in any court of competent jurisdiction, the parties shall negotiate in good faith regarding the submission of the claim to judicial reference pursuant to Code of Civil Procedure sections 638.1 and 641 - 645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied all necessary and appropriate parties will participate.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision. The parties shall use the procedures adopted by the American Arbitration Association for judicial reference or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties, provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (a) The proceedings shall be heard in the county in which the Development is located;
- (b) The referee need not be an attorney or retired judge; but, if not, the referee must have at least five years' experience in relevant real estate matters;
- (c) Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;
- (d) The referee may require one or more pre-hearing conferences;
- (e) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (f) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (g) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (h) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

If the Association and/or Owner has complied with the requirements of subparagraphs (i), (ii), (iii) and (iv) above and either party elects not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, the Association, any Owner, or Declarant may bring an action in any court of competent jurisdiction to resolve the dispute. The Association and each Owner covenants that each shall forbear from commencing any litigation against the Declarant without complying with the procedures described in subparagraphs (i), (ii), (iii) and (iv) above. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in subparagraphs (i), (ii), (iii) and (iv). The procedures set forth in subparagraphs (i), (ii), (iii) and (iv) above shall not apply to any action taken by the Association against Declarant for delinquent assessments, which shall be governed by Section 6.10, or in any action involving any Common Area Improvement bonds, which shall be governed by the provisions of Section 5.11. Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in subparagraphs (i), (ii), (iii) and (iv).

Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant, each party shall bear its own attorneys' fees.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Notwithstanding the provisions of this section, the Association, any Owner, or the Declarant shall not be obligated to participate in the non-binding mediation or judicial reference proceedings described herein if, prior to the commencement of the proceeding, that party makes a good faith determination supported by valid and sufficient reasons that such participation is not in that party's interest and notifies the other party in writing of its determination not to participate.

12.18 Annexation by Approval. No additional real property shall be annexed into the project without the approval of Members holding two-thirds of the total voting power of the Association other than Declaration and such approval as may be required under Section 10.13.

Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

THIS DECLARATION is executed this 9th day of August, 1994.

FIRST AMERICAN TITLE GUARANTY COMPANY
a California corporation
as record title holder

By: [Signature]
Its: DIVISIONAL VICE PRESIDENT

By: [Signature]
Its: ASSISTANT SECRETARY

CITATION NORTHERN
a California corporation

By: Philip F. Kamerer
As: V.A. Park Acquisition & Development

STATE OF CALIFORNIA)
COUNTY OF Contra Costa)ss.

On August 9, 1994, before me, Susan Nordwall, personally appeared Philip F. Kamerer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Susan Nordwall



4-29-98

STATE OF CALIFORNIA)
COUNTY OF Contra Costa)ss.

On August 9, 1994, before me, Susan Nordwall, personally appeared Ellen Hole and Cathy White, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Susan Nordwall



4-29-98

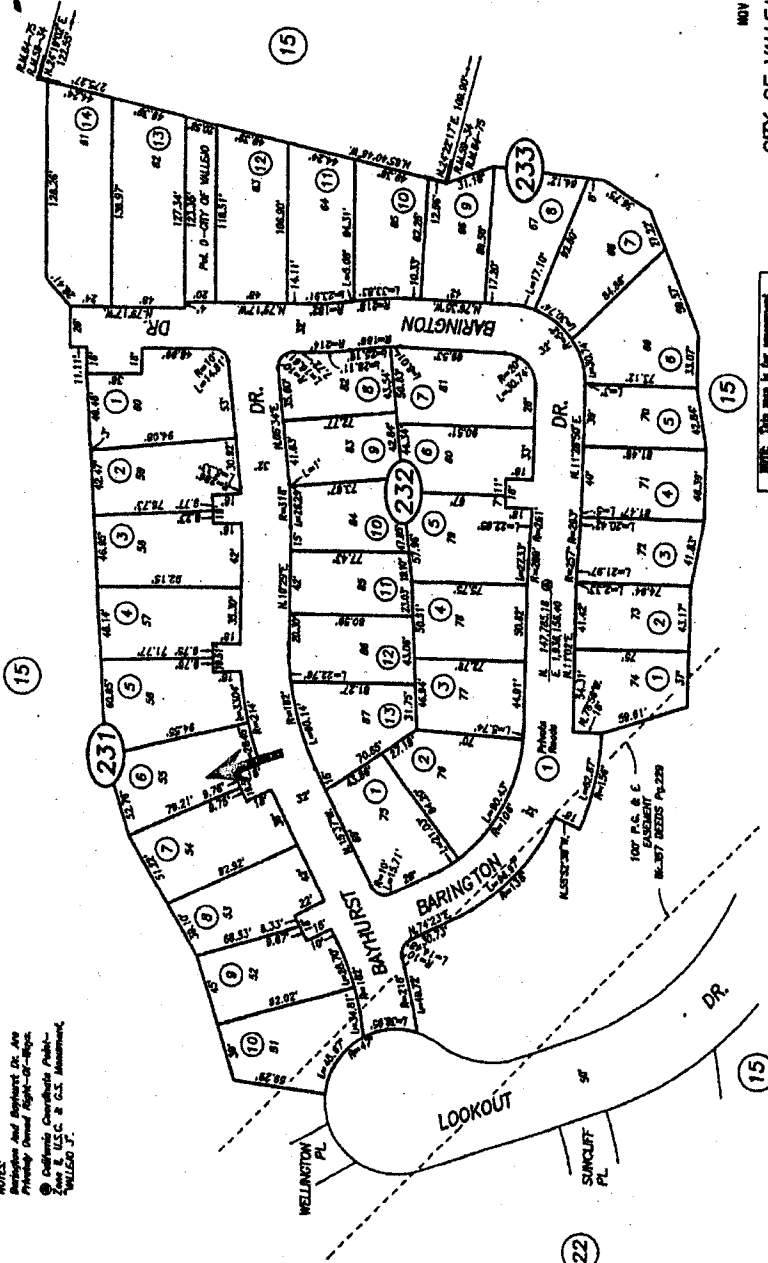
END OF DOCUMENT

75-23

Tax Area Code
7074

FOR SEC 29 INFORMATION
THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPARE WITH RECORDS.

NOTES:
1. Assessor and Engineer Do Not Assume Responsibility for Accuracy of Data Shown.
2. All Rights Reserved.
3. All Rights Reserved.
4. All Rights Reserved.
5. All Rights Reserved.



Description: Solano, CA Assessor Map 75.23 Page: 1 of 1
Order: 554748 Comment:

NOV 2 8 1978
CITY OF VALLEJO
Assessor's Map Bk. 75 Pg. 23
County of Solano, Calif.

NOTE: This map is for reference only and is not to be used as a legal document. It does not show any rights, easements, or other interests in land shown here.

REVISION	DATE	BY
1	7-27-78	RM
2	7-27-78	RM
3	7-27-78	RM
4	7-27-78	RM
5	7-27-78	RM

Shadow Ridge Unit No. 4, (Amended), R.M. Bk. 64 Pg. 75
Shadow Ridge Unit No. 4, (Amended), R.M. Bk. 64 Pg. 75

NOTE: Assessor's Block Numbers Shown in Circle
Assessor's Parcel Numbers Shown in Circle